

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ALLMARAS, et al.,

Plaintiffs,

vs.

ALLMARAS, et al.,

Defendants.

2:05-CV-1188-RCJ-RJJ

ORDER

This case arises out of a claim for life insurance benefits. On March 17, 2000, John Hancock issued a MarketPlace Level Term Life Insurance Policy, which provided benefits to Sandra Allmaras in case of Steven Allmaras' death. On May 25, 2004, Steven Allmaras was beaten to death at his home, leaving behind his wife Sandra and three surviving minor children. During the ensuing months, Sandra filed insurance benefit claims with various insurance companies, including John Hancock Life Insurance Company ("John Hancock" or "Defendant"), to collect for the loss of her husband. Sandra Allmaras made a claim for benefits under the John Hancock policy on June 8, 2004 and was paid a little over a year later on June 16, 2005.

Some time after making the insurance claims, Steven's surviving siblings and mother ("Plaintiffs") filed an action alleging that Sandra "willfully, intentionally, and with malice," arranged and conspired with another for the murder of the decedent. The Complaint also

1 brought causes of action against five insurance companies, including John Hancock, seeking
2 to enjoin or recover payment of various life insurance policies paid to Sandra. John Hancock
3 moved for summary judgment (#67) on February 16, 2006, claiming that NRS 41B.400
4 shielded it from liability to the Plaintiffs because it paid Sandra Allmaras under the insurance
5 premium in good faith and without actual knowledge that she was prohibited from receiving
6 payment. The Court issued an Order (#125) on June 12, 2006, denying John Hancock's
7 Motion for Summary Judgment because there was no Nevada case law mandating
8 Defendant's interpretation of NRS 41B.400. John Hancock now brings a Motion for
9 Reconsideration of the Court's denial of its original summary judgment motion (#129).
10

11 DISCUSSION

12 I. Standards of Review

13 A. Motion for Reconsideration Standard

14 "Reconsideration is appropriate if the district court (1) is presented with newly
15 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust,
16 or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J v. ACandS, Inc.*,
17 5 F.3d 1255, 1263 (9th Cir.1993). "A motion for reconsideration is not an avenue to re-
18 litigate the same issues and arguments upon which the court already has ruled." *In re*
19 *AgriBioTech, Inc.*, 319 B.R. 207, 209 (D. Nev. 2004).
20

21 B. Summary Judgment Standard

22 The purpose of summary judgment is to avoid unnecessary trials when there is no
23 dispute as to the material facts before the court. *Northwest Motorcycle Ass'n v. U.S. Dep't of*
24 *Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is proper if the evidence
25

1 shows that there is no genuine issue as to any material fact and the moving party is entitled to
2 judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317,
3 322 (1986). Where reasonable minds could differ on the material facts at issue, summary
4 judgment is not appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995).
5 As summary judgment allows a court to dispose of factually unsupported claims, the court
6 construes the evidence in the light most favorable to the nonmoving party. *Bagdadi v. Nazari*,
7 84 F.3d 1194, 1197 (9th Cir. 1996).

8 The moving party bears the burden of informing the court of the basis for its motion,
9 together with evidence demonstrating the absence of any genuine issue of material fact.
10 *Celotex*, 477 U.S. at 323. Once the moving party has met its burden, the party opposing the
11 motion may not rest on the mere allegations or denials of its pleadings, but must set forth
12 specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*,
13 477 U.S. 242, 248 (1986). When the nonmoving party bears the burden of a claim or defense
14 at trial, the moving party can meet its initial burden on summary judgment by showing that
15 there is an absence of evidence to support the nonmoving party's case. *Celotex*, 477 U.S. at
16 325. Conversely, when the moving party bears the burden of proof at trial, then it must
17 establish each element of its case at summary judgment.
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19 **II. Legal Arguments**

20 John Hancock brings a Motion for Reconsideration claiming that they are protected
21 from liability to the Plaintiffs under NRS 41B.400. This statute provides that
22

23 if a payor . . . , *in good faith*, pays or transfers any property . . . to a beneficiary in
24 accordance with the provisions of a governing instrument, the payor . . . is not liable
25 to another person who alleges that the payment or transfer to the beneficiary violated

1 the provisions of this chapter, unless before the payment or transfer, the payor or other
2 third person had *actual knowledge that the beneficiary was prohibited* from acquiring
or receiving the property . . . pursuant to the provisions of this chapter.

3 NRS 41B.400 (emphasis added). John Hancock argues that it is immune from liability to the
4 Plaintiffs because it paid Sandra Allmaras under the life insurance policy in good faith and
5 without actual knowledge of her having killed her husband. The two pertinent sections of the
6 statute in this case are the “good faith” and “actual knowledge” clauses. Nevada courts are
7 yet to interpret exactly what these phrases require. Plaintiffs argue that the threshold question
8 under the statute is whether John Hancock paid Sandra in “good faith,” which is a question of
9 fact and not ripe for summary judgment. John Hancock, on the other hand, contends that if
10 the “actual knowledge” clause is interpreted to require actual knowledge that the beneficiary
11 was the killer, as a question of law, then it does not matter whether there is evidence it paid in
12 good faith, and it should therefore be relieved of liability in summary judgment.

14 John Hancock is admittedly placed in a difficult situation in this matter. If it had
15 waited longer before paying Sandra Allmaras under the policy, then she might have brought
16 suit against them for payment. On the other hand, if, as has happened here, John Hancock did
17 pay Sandra under the policy, then it opened itself up to be sued by future claimants. Be that as
18 it may, summary judgment is not ripe. The Plaintiffs appear to be correct in reading the
19 statute to require a payor to show it paid in “good faith” before it can claim the “actual
20 knowledge” defense. Whether John Hancock paid Sandra in good faith is a question of fact
21 that is not ripe for judgment at this time. Therefore, the Motion for Reconsideration should be
22 denied and discovery should continue.

1 **A. The “Actual Knowledge” Clause of NRS 41B.400**

2 John Hancock’s Motion for Reconsider rests entirely on the “actual knowledge”
3 clause of NRS 41B.400. In its initial Motion for Summary Judgment, and now in its Motion
4 to Reconsider, John Hancock asks the Court to interpret the clause as imposing liability only
5 when a payor actually knew that the beneficiary was actually the killer before it made the
6 payment. As the Court noted during the May 8, 2006, hearing on the issue, there is no
7 Nevada case law interpreting the statute and it is open to other reasonable interpretations.
8 John Hancock now brings evidence from the legislative history and other jurisdictions to
9 support its interpretation of “actual knowledge” and asks the Court to reconsider its ruling
10 regarding the Motion for Summary Judgment.
11

12 The legislative history to NRS 42B.400 is more or less ambiguous, providing quotes
13 to support both John Hancock and the Plaintiffs’ desired interpretations. For instance, while
14 discussing the meaning of “actual knowledge,” Senator Wiener asked a life insurance
15 lobbyist (presumably responsible for helping draft the bill) if there is a distinction between
16 “actual knowledge” and “knowledge.” The lobbyist commented there was, and then Brad
17 Wilkerson, Committee Counsel, responded that “‘actual knowledge’ is different from what
18 would be referred to as ‘constructive knowledge,’ if a person has reason to know something,
19 but does not actually know it.” *Hearing on A.B. 159, Before Senate Comm. on Judiciary* (Nv.
20 March 5, 1999). This remark supports John Hancock’s more restrictive interpretation of
21 “actual knowledge,” as it differentiates clearly between “actual” and “constructive”
22 knowledge. But, as the Plaintiffs point out, immediately after Counsel Wilkerson’s comment,
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1 Chairman James “suggested that the language should probably be ‘knowledge’ or ‘reason to
2 know,’” and the lobbyist responded that he was willing to go with either construction. *Id.*

3 These statements lend support for both a stricter actual knowledge standard and a
4 broader constructive knowledge standard. But, despite this seeming ambiguity in the
5 legislative history, the plain language of the statute should control. The legislature rejected
6 Chairman James’ suggestion and chose the words “actual knowledge” for the enacted statute,
7 with apparent clarity regarding their meaning as opposed to “knowledge” or “constructive
8 knowledge.” The legislative history should not be used to contravene the unambiguous plain
9 language.
10

11 Analogous case law from other jurisdictions also supports John Hancock’s
12 interpretation of “actual knowledge.” For example, California requires a higher standard of
13 notice for “actual knowledge” than for “constructive knowledge.” The California Civil Code
14 defines actual notice” as “express information of a fact,” and “constructive notice” as
15 information “imputed by law.” West’s Ann. Cal. Civ. Code § 18(1) and (2). Constructive
16 notice is obtained when a person “has actual notice of circumstances sufficient to put a
17 prudent man upon inquiry as to a particular fact.” *Gates Rubber Co. v. Ulman*, 214 Cal. App.
18 3d 36, 365 (Cal. App. 2d 1989).

19 In a factually similar case in Illinois, an action was brought against a life insurance
20 company for negligently issuing a policy based upon an application by a beneficiary who
21 claimed to be the insured’s child and who allegedly later murdered the insured. *Bajwa v.*
22 *Metro. Life Ins. Co.*, 776 N.E.2d 609 (Ill. App. Ct. 2002). The plaintiff claimed that the
23 defendant had actual knowledge that the beneficiary intended to murder the named insured as
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1 soon as the policy was issued in order to collect the benefits. The court granted summary
2 judgment for the insurance company, noting that although there was sufficient evidence “to
3 put Met Life on notice that further inquiry was required,” “[t]he fact that Met Life should
4 have noticed and followed up on these issues does not establish that Met Life had actual
5 knowledge of the information alleged by Plaintiff.” *Id.* at 628. Similarly, John Hancock
6 contends that while it might have been on notice that Sandra was being investigated for her
7 husband’s murder, it did not possess actual knowledge of any murder and should thus be
8 freed of any liability for the distribution.

9
10 John Hancock contends that following the plain language of the statute and analogous
11 case law, it clearly lacked “actual knowledge” that Sandra Allmaras was the killer. To prove
12 lack of actual knowledge, John Hancock points out that: (1) it did not pay Sandra until more
13 than year after her claim was filed; (2) she has not been criminally charged with any
14 involvement in her husband’s death; (3) no party had brought a civil claim against Sandra
15 prior to the time the insurance proceeds were distributed; (4) no competing claims were filed
16 on the insurance proceeds before the distribution; and (5) it closely tracked the police
17 investigation of Sandra and did not pay on the claim until it was assured that no criminal
18 charges were imminent or pending. It is clear from these facts that John Hancock did not
19 possess actual knowledge that Sandra killed her husband.

20 John Hancock appears to have successfully argued that NRS 41B.400 requires
21 “actual,” as opposed to mere “constructive,” knowledge, and that it did not possess actual
22 knowledge that Sandra Allmaras killed her husband. But, it fails to persuasively articulate
23 what exactly the payor must not have actual knowledge *of* to avoid liability under the statute.
24

1 John Hancock assumes that if “actual knowledge” is interpreted its way, then it should avoid
2 liability so long as it did not possess actual knowledge that Sandra Allmaras was the killer
3 prior to issuing payment on the policy. But, as the Court noted in the May 8, 2006, hearing,
4 the statute is also open to the interpretation that John Hancock could be held liable if it had
5 actual knowledge that Sandra was being *investigated* for killing her husband when it made
6 payment. The statute states that a payor is not liable if it did not have “actual knowledge that
7 the beneficiary *was prohibited from acquiring or receiving the property . . . pursuant to the*
8 *provisions of this chapter.*” NRS 41B.400 (emphasis added). The statute, and Nevada case
9 law, does not specify whether the payor must not have actual knowledge that the beneficiary
10 actually killed or whether they are just suspected of having killed.
11

12 A reasonable interpretation of the statute is that it requires only a showing that John
13 Hancock knew that Sandra was accused of the killing to bar the defense. The Defendant has
14 not met its burden in persuading the Court to reverse its earlier ruling. Summary judgment is
15 clearly not ripe as John Hancock admits that it was aware of the investigation when it paid
16 Sandra. Further investigation is needed to determine how aware John Hancock was of the
17 investigation, what steps it took to monitor the investigation, whether it paid Plaintiff in good
18 faith, and so forth.

19 **B. The “Good Faith” Clause of NRS 41B.400**

20 Plaintiffs also argue that it might not even be necessary to determine what exactly the
21 Defendant must not have had actual knowledge of because the statute requires that John
22 Hancock must *first* show that it paid in good faith before it can claim defense under lack of
23 actual knowledge. Again, the statute provides that: “if a payor . . . in good faith, pays a
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1 beneficiary,” then the payor is not liable to another person unless it had actual knowledge that
2 the beneficiary was prohibited from receiving prior to the payment. NRS 41B.400. In using
3 the conditional “if,” the statute seems to first require a showing that the payment was made in
4 good faith before determining whether there was actual knowledge. Therefore, John Hancock
5 must demonstrate that it paid in good faith before it can succeed in summary judgment. This
6 is a question of fact that is not ripe for summary judgment unless there remain no genuine
7 issues of material fact for further discovery and trial.

8
9 John Hancock has not sufficiently shown that it issued the insurance proceeds to
10 Sandra in good faith under Rule 56. Other jurisdictions have consistently held that payment
11 in good faith requires a proof that the insurance company conducted “a reasonable and
12 prudent prepayment investigation when the company is aware of suspicious circumstances
13 involving the beneficiary in the death of the insured.” *Harper v. Prudential Ins. Co.*, 662 P.2d
14 1264, 1273, 233 Kan. 358, 370 (Kan. 1983). *See also Lunsford v. Western States Life Inc.*,
15 908 P.2d 79, 86 (Colo. 1995) (“if an insurer is on notice of facts suggesting that the primary
16 beneficiary is not entitled to disbursement of policy proceeds, the insurer has a duty to make a
17 reasonable inquiry and to withhold payment until its suspicion is dispelled.”); *In re Estate of*
18 *Thompson*, 426 N.E.2d 1, 3, 99 Ill. App. 3d 303 (Ill. 1981) (holding that the good faith
19 standard is violated when insurers fail to pursue a reasonable investigation). The sufficiency
20 of an insurance company’s investigation in such circumstances is a question of fact.


21 In this case, a genuine issue of material fact exists as to whether John Hancock
22 properly investigated Sandra Allmaras’ involvement in her husband’s murder before it
23 distributed payment, especially considering its admission that it knew about and tracked the
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1 police's investigation of her. John Hancock claims the present factual record clearly
2 establishes that it paid in good faith because: (1) it delayed payment for over a year to track
3 the police investigation; (2) no criminal charges were ever filed against Sandra; and (3) no
4 one brought a civil claim against Sandra or the insurance proceeds prior to the payment.
5 However, more information is needed regarding the nature of John Hancock's independent
6 investigation into Sandra's qualification to receive payment under NRS 41B. Its awareness of
7 the police's continuing investigation against Sandra creates a question of fact regarding
8 whether John Hancock made payment in good faith under the statute. Accordingly, summary
9 judgment is not appropriate and discovery should continue.
10

11 CONCLUSION

12 Therefore, IT IS HEREBY ORDERED that Defendant John Hancock's Motion for
13 Reconsideration (#129) is *denied*. Genuine issues of material fact remain regarding whether
14 its payment to Sandra Allmaras was made in good faith and without actual knowledge.
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16 DATED: January 5, 2007.
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20 _____
21 ROBERT C. JONES
22 UNITED STATES DISTRICT JUDGE
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